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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Limitations on Commercial	)	MM Docket No. 93-254
Time on Television	)	
Broadcast Stations	)	

To: The Commission

Comments of National Broadcasting Company, Inc.

National Broadcasting Company, Inc. ("NBC"), in response to the Commission's Notice of Inquiry[1] in this docket, submits its comments on the issue of commercial time limits for television broadcast stations.

As explained below, NBC believes that the adoption of commercial time limits would impose enormous and needless administrative burdens on broadcasters and the Commission. It would add yet another government-imposed handicap to single-channel broadcasters while their multichannel competitors are rapidly increasing their commercial inventory through increased channel capacity. Re-regulation of this sort could potentially threaten the broadcast revenues that drive the public's most significant sources of local and national news and public affairs information, would strangle the emerging diversity afforded by alternative broadcast formats, would stifle creativity, and would further impede broadcasters' exercise of their First Amendment

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[1] Notice of Inquiry, FCC 93-459, released October 7, 1993.

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rights. Some foundering stations that have been revived by selective use of home shopping or infomercial formats might fail. For this enormous cost the Commission would buy no corresponding benefit for the public.

I. Reimposition of Commercialization Guidelines is Unjustified Because the Television Marketplace is Fiercely Competitive

The Commission eliminated its former television commercialization guidelines in 1984 for good reasons. Noting that television broadcast station commercialization in general was well below its guidelines, the Commission found that market forces, not government regulation, had kept commercialization in check. Report and Order (Commercial TV Stations), 98 F.C.C.2d 1076, 1103 (1984). After examining an extensive record that included hard data and economic analysis, the Commission concluded that the television marketplace had become so competitive that overcommercialized stations would simply be tuned out.[2] The Notice of Proposed Rule Making (Commercial TV Stations) in MM Docket No 83-670, 94 F.C.C.2d 678 (1983) that proposed elimination of the guidelines cited significant competition in the 1983 television marketplace. Among other

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[2] The Commission found that the guidelines, though useless and unnecessary, had entailed extensive direct and indirect costs: enormous public and private paperwork burdens, possible anti-competitive effects, the stifling of ingenuity, infringement of First Amendment rights, and interference with "the natural growth of broadcast television as it attempts to compete with future video market entrants." Id. at 1103-04.

things, the Commission noted that:

- Almost all television households had access to at least four television signals, and sixty-five percent of television households received seven or more signals.
- More than 800 commercial and 270 noncommercial television stations were on the air.
- About thirty-seven percent of television households subscribed to cable and "state of the art" cable systems offered "36 channels or more."
- The Commission had just approved, in principle, the concept of MMDS.
- About 4.2 percent of households had video tape recorders and video disc players were being introduced.
- DBS was envisioned to be imminent, and LPTV stations had recently been authorized to originate programming.

Id. at 689-90.

Now, without citing any hard data or economic analysis, the Commission asks whether it should reexamine the "basic assumptions" of the 1984 deregulation order. "Specifically", the Commission asks, "should some measure besides public acceptance be used to define an 'excess' of commercial programming?" Notice of Inquiry at 2. That is, the Commission asks whether consumers are capable of making their own choices, or whether the government should itself decide the amount and dictate the kinds of commercial programming that Americans are allowed to access on commercial broadcast television.

Obviously, consumers armed with remote controls, VCRs, satellite dishes, and growing numbers of cable TV channels can and do make their own choices. If there ever was a time when viewers had no practical alternative than to watch an "overcommercialized" channel, it has long since passed. In 1994 and beyond consumers will have so many video programming options that it is ludicrous to assert that anyone will be compelled to watch a program (or even an advertisement) that he or she does not find appealing, on a broadcast channel or elsewhere. The FCC reported in 1992 that nearly half of all households receive ten or more over-the-air signals;[3] and many or most of those stations will eventually offer HDTV service as well. Cable subscribership has increased to more than 55 million households today. Cable passes more than 98% of the nation's homes, and more than 62% subscribe.[4] "State of the art" cable systems offer a hundred channels or more, with hundreds more on the horizon, and dozens of new satellite cable channels are becoming available to fill the new capacity.[5] The broadband video capacity offered by telecommunications giants such as a merged Bell Atlantic/TCI may eventually dwarf the capacity that is available today. Wireless cable is a reality, and with last

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[3] Review of the Commission's Regulations Governing Television Broadcasting, MM Docket 91-221, FCC 92-209, released June 12, 1992.

[4] Broadcasting and Cable, December 13, 1993, p. 106.

[5] A recent trade publication article lists nearly five dozen new cable channels that are in the works. See "Broadcasting and Cable's exclusive roundup of to-be-launched cable networks", Broadcasting and Cable, November 29, 1993, pp. 36-46.

week's successful launch of Hughes' high power satellites, competitive multichannel DBS services will be available within months. Video cassette recorders, in 4.2 percent of US homes when the Commission first considered eliminating the commercial guidelines, are ubiquitous today. More than 1500 full power and more than 1400 low power television stations are licensed.[6]

This media landscape, populated with growing competition in traditional television broadcasting, vigorous growth of cable television (both in subscribers and program diversity), and the emergence of new forms of video program delivery, utterly belies the notion that any broadcaster has a captive audience that must unwillingly suffer through unwanted commercial programming in order to watch the programming he or she wants. There is simply no evidence that commercial television stations are overcommercialized, and there is no basis for imposing onerous new commercial time limits on commercial television broadcasters.

II. Commercial Guidelines Would Reduce Diversity in Broadcast Television

Imposition of commercial time limits can only harm the public by reining in diversity. Regulations that restrict the flexibility of television broadcast stations to rely wholly or partially upon creative formats to stay on the air inevitably

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[6] Broadcasting and Cable, December 13, 1993, supra.

will force some of those stations to go dark. Television broadcasters, with a single revenue stream, have no way to recapture revenue lost as a result of government-imposed commercial limits. It would be impossible for television broadcasters to raise rates to compensate for lost inventory, because televisions broadcasters must compete for advertising dollars as well as viewers in the fiercely competitive video services market.[7] The same competitive media outlets that naturally inhibit the programming of excessive commercial matter also limit the extent to which broadcasters can raise advertising rates to compensate for any reduction in commercial units caused by re-regulation.

Unable to raise revenues, commercial television broadcasters will have no choice but to lower costs in order to continue broadcasting if the government limits their inventory. Revenue reductions would unavoidably be reflected in cutbacks in local news and public affairs programming -- among the most expensive programming to produce. With smaller budgets, broadcasters would also be handicapped in their ability to bid competitively for the best sports events and entertainment programming, resulting in its migration to unregulated services.

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[7] Of course, even the video advertising business is not a closed system. Commercial television broadcasters also compete for advertising dollars with commercial radio stations, newspapers, yellow pages, direct mail, and other advertising vendors. None of these media faces government-imposed restrictions on the amount of commercial matter it may include.

III. The Imposition of Commercial Time Limits Would be Inconsistent with the Commission's Own Findings

It is ironic that the Commission would even consider adoption of commercial time limits on broadcasters while MM Docket 91-221[8] (Television Deregulation) languishes. The imposition of commercial time limits, which implicitly assumes inadequate broadcast competition for viewers, would exacerbate many of the same problems faced by television broadcasters that Docket 91-221 was initiated to solve. In that docket, after chronicling the rapid decline of broadcasters' share of the video marketplace, the Commission wrote:

> Declining audience shares have been reflected in declining advertising revenues for broadcast television stations and networks. This is not surprising, since revenues would be expected to decline as competition puts downward pressure on advertising rates. ...[N]etwork advertising revenues in real terms . . . reached a peak in 1984 and have declined since . . . .

Id. at para. 5. The Commission also cited decreasing profits of large market television stations and noted that "losses apparently have become the norm in much of the rest of the industry." Id. at para. 6. The Commission also surmised, correctly, that cable television's share of advertising revenues would increase:

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[8] Notice of Proposed Rulemaking (Review of the Commission's Regulations Governing Television Broadcasting), MM Docket 91-221, released May 14, 1992.

> . . . substantial cable advertising growth could occur as advertisers respond to audience shifts and as mechanisms develop for measuring and selling cable audiences more effectively. Accordingly, the comments generally reflect the belief that over-the-air television will face increasing competitive pressure from multichannel media with dual revenue streams. Regulations adopted before the advent of such competition may reduce the ability of broadcasters to respond competitively and to continue offering services that advance the public interest.

Id. at para.

With advertising and viewers being spread among greater and greater forms of video delivery, each offering more and more channels, it is counterproductive for the Commission even to consider imposing unnecessary restrictions on the single revenue source for one-channel commercial television broadcasters. The Commission has recognized the difficulties that media fragmentation has caused for free, over-the-air commercial television broadcasters. It should apply its resources toward the solutions contemplated in MM Docket 91-221, rather than waste time and money making matters worse.

IV. Conclusion

The FCC cannot establish uniform tastes for the public. The various levels of commercialization that individuals find useful, interesting, or tolerable will vary from person to person and time to time. Even limiting the range of choices to the broadcast universe, viewers have a wide range of options, from noncommercial stations to home shopping channels and everything in between. This is precisely the benefit of diversity: not all Americans have the same needs or share the same tastes. The one thing that is clear is that a broadcaster whose programs do not meet the needs and interests of the public will not long stay in business. Even home shopping stations would quickly change format or sign off if no one watched them.

The Commission has asked whether it should find a solution to a problem it has not shown to exist. The supposed cure under consideration would cause real problems for broadcasters, the public, and even the Commission. Free over-the-air commercial television broadcasters would be further handicapped in their attempts to compete with alternative media that face virtually no content regulation. Television broadcasters would be burdened by a counterproductive regulation, and the quality and diversity of free broadcast television would be compromised.

For these reasons, NBC opposes the initiation of any proceeding by the Commission to consider adoption of commercial guidelines or limits.

Respectfully submitted,

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